

APR 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

BRANDYN BLATCHFORD, aka
Brandon Blatchford,

Defendant - Appellant.

No. 05-10169

D.C. No. CR-04-00562-DGC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
David G. Campbell, District Judge, Presiding

Argued and Submitted April 3, 2006
San Francisco, California

Before: FERGUSON, TROTT, and KLEINFELD, Circuit Judges.

Brandyn Blatchford appeals his convictions and sentence for engaging in a sexual act with a person incapable of appraising the nature of the conduct, in violation of 18 U.S.C. § 2242(2)(A), and engaging in a sexual act with a person

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

between the ages of twelve and fifteen, in violation of 18 U.S.C. § 2243(a). We affirm.

The district court properly admitted Robert Belone's testimony that the reason he did not have sex with the victim was because she was too drunk. Belone's opinion as to the victim's state of intoxication was rationally based on his perception and helpful to the jury. See Fed. R. Evid. 701. That Belone's testimony went to an ultimate issue of fact does not render it inadmissible. See Fed. R. Evid. 704(a); United States v. Crawford, 239 F.3d 1086, 1090 (9th Cir. 2001).

Belone's later testimony that he did not have sex with the victim because he was concerned about her age was also admissible. A defendant's reasonable belief that the victim was sixteen is an affirmative defense to a charge under 18 U.S.C. § 2243(a). 18 U.S.C. § 2243(c). Therefore, Belone's belief as to the victim's age was admissible to prove the reasonableness of Blatchford's professed belief that the victim was at least sixteen. See United States v. Yazzie, 976 F.2d 1252, 1253-55 (9th Cir. 1992). Moreover, the testimony was relevant to Belone's credibility because it was offered to impeach his earlier testimony. The district court did not plainly err in allowing any of Belone's testimony.

At sentencing, the district court recognized the advisory nature of the United States Sentencing Guidelines and properly considered the factors set forth in 18 U.S.C. § 3553(a). The district court thus committed no sentencing error.

AFFIRMED.